



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

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July 26, 1996

William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

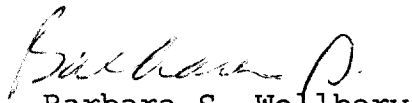
Re: Ex Parte Filing of the National Telecommunications and  
Information Administration in MM Docket No. 95-176

Dear Mr. Caton:

In accordance with Section 1.206 of the Commission's rules and regulations, enclosed please find two (2) copies of an ex parte letter that NTIA sent this day to Chairman Hundt and Commissioners Quello, Chong, and Ness. Please include these documents in the record in the above-captioned proceeding.

If you have questions, please contact me at (202) 482-1816.

Sincerely,

  
Barbara S. Wellbery  
Chief Counsel

Two copies rec'd 041  
10/1/96



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Communications**  
**and Information**  
Washington, D.C. 20230

July 26, 1996

EX PARTE OR LATE FILED

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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RE: MM Doc. No. 95-176

Dear Chairman Hundt:

This letter responds to the Notice of Inquiry released by the Commission in the above captioned proceeding on December 4, 1995.<sup>1/</sup> As the President's principal adviser on telecommunications matters, the National Telecommunications and Information Administration (NTIA) has a great interest in the Commission's inquiry regarding the video programming accessibility provisions in the Telecommunications Act of 1996.<sup>2/</sup>

Telecommunication and information technologies have the potential to help equalize opportunities for people with disabilities. As the cost drops of matching customized solutions to the capabilities of individuals with disabilities, so do the barriers that have for so long blocked full participation by people with disabilities in American culture and economy. From accessible telephone services and equipment to Universal Service and video programming accessibility,<sup>3/</sup> the Act embodies this concept of greater participation through telecommunications. Perhaps more than access to any other medium, access to video programming will enable individuals with disabilities to participate in the American political, social, and cultural experience. By passing Section 713 of the Act with widespread

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<sup>1/</sup> Closed Captioning and Video Description of Video Programming, MM Docket No. 95-176, Notice of Inquiry, FCC 95-484 (released Dec. 4, 1995).

<sup>2/</sup> Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 *et seq.*) (the Act).

<sup>3/</sup> Section 255 of the Act requires manufacturers of telecommunications equipment or customer premises equipment and providers of telecommunications services to ensure that their services and equipment are accessible to and usable by individuals with disabilities, if readily achievable. *Id.* § 255. The Universal Service provision in Section 254 seeks to assure that all Americans have access to affordable telecommunications services. *Id.* § 254. Section 713 requires the Commission to ensure that "video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions." Further, the Commission must ensure that "video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions." *Id.* § 713(b)(1),(2) (codified at 47 U.S.C. §§ 613(b)(1),(2)).

bipartisan support, Congress has shown that facilitating the accessibility of video programming is a high public policy priority for the United States.

NTIA offers comments at this time on a general approach to implementing the closed captioning mandate in Section 713 of the Act. We believe the Commission's activities in this important area should be guided by five important considerations.

First, the Commission should implement Congress' mandate as set forth in section 713 of the Act and develop broad rules requiring that "video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions . . . ."<sup>4/</sup> The statutory language is clear and unambiguous in its direction to the Commission. Further, in directing the Commission to develop captioning requirements, Congress stated its goals unequivocally: "to ensure that all Americans ultimately have access to video services and programs, . . . ."<sup>5/</sup> A broad captioning requirement would also be consistent with the larger efforts towards inclusion that have been Federal policy since the Americans with Disabilities Act (ADA) was enacted in 1990, and which seeks to make services, products and communications accessible to individuals with disabilities.<sup>6/</sup> In the past, Congress has extended this policy of inclusion to video programming by enacting legislation designed to increase indirectly the amount of captioned programming; the Act reflects a decision by Congress to move beyond these indirect approaches to mandate specifically that programming be captioned.<sup>7/</sup>

Second the Commission should scrutinize any requests for exemptions from captioning requirements closely. It should also ensure that those seeking exemptions bear the burden of proof in demonstrating that they satisfy the statutory basis for exemptions, as the statutory

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<sup>4/</sup> The Act § 713(b)(1) (codified at 47 U.S.C. § 613(b)(1)).

<sup>5/</sup> H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 183-184 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 197.

<sup>6/</sup> Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.. The ADA is a landmark piece of legislation which extends civil rights protection to individuals with disabilities in order "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." See ADA § 12101(b)(1).

<sup>7/</sup> Congress has sought to increase the amount of captioned programming on two occasions. First, Congress planted the seeds of the captioning industry by allocating funds for the captioning of video programming in the Individuals with Disabilities Education Act (IDEA). IDEA, Pub. L. No. 101-476, 104 Stat. 1142 (codified as amended in scattered sections of 20 U.S.C.). Congress also passed the Television Decoder Circuitry Act of 1990 (TDCA) which required that every television sold or manufactured in the United States be equipped with the ability to decode captioning data. TDCA, Pub. L. No. 101-431, 104 Stat. 960 (codified as amended at 47 U.S.C. §§ 303, 303 note, 330, 330 note, 609 note). Congress' enactment of the Section 713 mandate suggests it believes that its previous efforts have been insufficient and more direct and compulsory measures are now necessary to meet the needs of hearing impaired viewers.

scheme Congress adopted would require.<sup>8/</sup> Simply said, Congress has indicated that closed captioning is the required tool for broadening access to video programming, and that the Commission may grant exemptions to these captioning requirements only where they are well justified by the circumstances set forth in the Act.

Third, NTIA believes that the Commission can most effectively implement the closed captioning requirements of the Act by providing suitable fora for the relevant parties to participate in vigorous and robust dialogue. While the traditional rulemaking process will provide the Commission with important data and valuable proposals, supplemental public meetings would yield several added benefits. Such meetings would afford the parties an opportunity to move beyond their positions on these complex issues and to engage in real give and take with the Commission.

Fourth, the Commission should consider prescribing substantial penalties for entities that fail to meet their obligations under the Act. These penalties should be substantial enough to ensure compliance with the Act and ensure that video programming is fully accessible to hearing impaired individuals.

Fifth, in terms of captioning requirements with respect to future developments in television, the Commission should resolve any technical problems that would inhibit the seamless transmission and reception of captioned programming and seek provision of audio, video and ancillary data channels capable of adequately serving the needs of individuals with disabilities both now and into the future.

The Commission has the opportunity to make genuine and meaningful improvements in the lives of individuals with disabilities through the implementation of Section 713 of the Act. By making video programming more accessible, the Commission will enable people with disabilities to participate more fully in our information-based society and thereby fulfill

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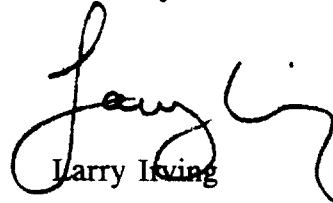
<sup>8/</sup> Section 713 provides for three exemptions to the requirement to make programming accessible through the provision of closed captioning:

- (1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming;
- (2) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on the date of enactment of the Telecommunications Act of 1996, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and
- (3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

The Honorable Reed Hundt  
Page 4

the policy of inclusion as articulated by the ADA. The Commission should enact rules and adopt standards that will ensure that the needs of individuals with disabilities be addressed as new communication and information technologies emerge.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Irving", with a stylized flourish extending from the end of the signature.

Larry Irving

cc: Commissioner James H. Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness